Filed 6/4/19 In re E.Z. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re E.Z. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. P.L. et al., Defendants and Appellants.	G056904 (Super. Ct. Nos. 17DP0261 & 17DP0262) O P I N I O N

Appeals from orders of the Superior Court of Orange County, Antony C. Ufland, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant P.L.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant M.Z.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

INTRODUCTION

M.Z. (Mother) is the mother of now four-year-old E.Z. and now two-year-old I.Z. (collectively, the children). The children were living with Mother and P.L., who is I.Z.'s father (Father),[1] when they were taken into protective custody following a domestic violence incident in the home. Father appeals from the juvenile court's order terminating reunification services and setting a permanency hearing pursuant to Welfare and Institutions Code section 366.26. (All further statutory references are to the Welfare and Institutions Code.) He contends his challenge to that order is cognizable on appeal because the record does not contain proof that notice of the order was served on him, excusing his failure to seek writ relief. Mother contends the juvenile court erred by summarily denying her section 388 petition seeking the return of the children to her care and custody or, alternatively, authorization for a 60-day trial visit or further reunification services. Both Father and Mother argue the court otherwise erred by terminating their parental rights after finding inapplicable the parent-child relationship exception under section 366.26, subdivision (c)(1)(B)(i).

For the reasons we explain, none of Father's and Mother's contentions of error has merit. We therefore affirm.

BACKGROUND

I.

THE JUVENILE DEPENDENCY PETITION

In March 2017, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition on behalf of the children (the petition), alleging the children came within the jurisdiction of the juvenile court under section 300, subdivision (b)

[1] E.Z.'s father's identity and whereabouts are unknown.

(failure to protect). The dependency petition, as amended one month later, set forth the following allegations.

In January 2017, the children, along with their now eight-year-old half-sibling G.T.,[2] resided with Father and Mother. On January 18, 2017, Mother was showering in the home when Father entered the shower and immediately began pushing Mother and pulling her by the hair. Father forced the running shower head into Mother's mouth, preventing her from breathing. Mother left the shower and vomited shortly afterward. She sustained a bruise on her right arm. The children and G.T. were present in the home at the time of the incident; G.T. saw Mother vomit and observed a cut on her hand. Father was arrested for inflicting corporal injury on a spouse.

The petition alleged G.T. reported having observed previous instances of domestic violence between Father and Mother. On November 16, 2016, Father and Mother had engaged in a physical altercation in G.T.'s presence during which Father kicked Mother and forcefully took off Mother's pants. G.T. also saw Mother put a knife on Father's chest and Father and Mother struggle for the knife.

The petition further alleged Mother did not take timely and appropriate action to protect the children and G.T. from Father's actions. After the January 2017 incident, Mother was advised and given resources to seek an order protecting her, G.T., and the children from Father as well as an order granting her custody of the children. As of the filing of the petition in March 2017, Mother had not made progress seeking either order.

The children were taken into protective custody due to the ongoing domestic violence in the home and Mother's failure to protect the children from it.

---

[2] The petition was filed on G.T.'s behalf as well. G.T. was eventually released to the custody of her father, M.T., with family maintenance services. Neither G.T. nor M.T., however, is a party to this appeal and they are only referenced in this opinion to provide relevant background.

II.
THE JURISDICTION AND DISPOSITION REPORT AND ADDENDUM REPORTS; THE JUVENILE COURT SUSTAINS THE PETITION AND ORDERS REUNIFICATION SERVICES.

In April 2017, the Jurisdiction and Disposition Report provided information regarding Father and Mother's history of engaging in acts of domestic violence and Mother's failure to protect the children. SSA reported that Father was arrested in connection with the prior November 2016 domestic violence incident. Mother reported that on that occasion, Father had pushed her, thrown food in her face, attempted to pull down her pants, and kicked her in the chest several times, all of which occurred while the children and G.T. were home. She told the social worker: "The part of the knife is not true. We were eating and I was going to cut the cheese so I had a knife in my hand, but I didn't put the knife to his chest. He even told the police I didn't cut him. The three kids were present this time. He became upset and started throwing stuff at me from the table and I told him to calm down. He grabbed my hair, kicked me and tried to take off my pants." She stated E.Z. "got really nervous and scared and he started to shake." Nevertheless, at the time of the incident, Mother expressed she did not want Father arrested and declined an emergency protective order. During the investigation of that incident, Father and Mother reconciled and Father returned to the home.

The report further stated that Father was again arrested in connection with the January 2017 domestic violence incident, which also occurred while the children were present in the home. With regard to that incident, Mother stated she was unsure how much of the incident G.T. witnessed as G.T. was in the bedroom and Mother was in the bathroom when Father entered the bathroom. Mother thereafter signed a safety plan agreeing to file documents seeking full custody of I.Z., contact law enforcement if Father were to come back to the home, and attend a team decisionmaking meeting in order to participate in voluntary services. Mother, however, did not comply with the recommendations outlined in the safety plan. She did not attend a team decisionmaking

meeting and she failed to extend the emergency protective order issued against Father that expired at the end of January 2017, despite being advised to do so.

Mother later explained to the social worker that she wanted to obtain custody of I.Z. but she was delayed in obtaining the necessary documents. With regard to her failure to follow up with the protective order and attend the team decisionmaking meeting, Mother stated: "I did not know how my relationship was going to be with [Father]. I was also on my way to the meeting but I was running late and the social worker told me that she couldn't wait."

Shortly after the children were detained in March 2017, the juvenile court ordered visitation for Mother and the children consisting of two, two-hour unmonitored visits each week. The court also ordered visitation for Father in the form of monitored visits, but Father had not yet presented himself to the court. A few weeks later, the social worker learned that Mother was having contact with Father during the children's visits with her. G.T. told a social worker during an interview that she liked visiting Mother when they go to the park together but shared that Father had "followed the family during a visit." The children's maternal uncle, who resided with Mother, reported that Father was frequently in Mother's home. The maternal uncle told the social worker that Father would go to Mother's home every Sunday; Mother would pick him up in Santa Ana and bring him to her home when the children were visiting. The maternal uncle stated Mother "is not serious about this, she thinks this is a game." He further stated that Mother would "party a lot" and would frequently leave the children in his care. He stated, "She cares more about going out than her kids." He told the social worker that during visits, Mother would take the children to the home, but would then fall asleep, leaving him to care for them, feed them, and change their diapers. When asked to feed the children, Mother would respond, "I am lazy" and would then take a nap. He stated Father would express that he missed the children; Mother would allow him to visit and

say, "Just don't let the social worker find out." The maternal uncle also told the social worker that Father and Mother would frequently argue in front of the children.

SSA filed an ex parte application to inform the court of Mother's continued contact with Father as reported by G.T. and the maternal uncle, and to ask the court to authorize SSA to lift or reinstate monitored visitation as necessary to protect the children's health and safety. The juvenile court granted SSA's request and ordered that Mother's visits with the children would thereafter be supervised. The court also ordered Mother not to allow any unauthorized contact between Father and the children.

At the jurisdiction hearing in April 2017, Father and Mother submitted to the allegations of the petition. The court sustained the petition as amended, finding its allegations true by a preponderance of the evidence.

In an addendum report, the social worker noted that because Father had asserted his Fifth Amendment right not to incriminate himself, the social worker's discussion with Father was limited to services and visitation issues and not issues related to jurisdiction. In the report, the social worker stated Father had agreed to participate in individual counseling, anger management, a parent education program and a parent mentor program.

At the disposition hearing, the juvenile court declared each of the children a dependent child of the juvenile court, removed them from Father's and Mother's custody and care, and ordered reunification services for Father and Mother. The disposition order noted that Father's and Mother's respective progress toward alleviating or mitigating the causes necessitating placement had been minimal. The disposition order also stated Father would have two, two-hour monitored visits per week and Mother would have three, two-hour monitored visits per week.

III.

AFTER MOTHER IS GRANTED UNMONITORED VISITS AND A 60-DAY TRIAL VISIT, THE TRIAL VISIT AND MOTHER'S AND FATHER'S REUNIFICATION SERVICES ARE TERMINATED AND A PERMANENCY HEARING IS SET AFTER FATHER IS FOUND IN MOTHER'S HOME.

In an October 2017 status review report, the social worker reported that Mother had been actively engaged in her case plan, having participated in a personal empowerment program, two counseling programs, a parenting program, and an in-home coaching program. The social worker reported that Mother had been very receptive to SSA's interventions and recommendations.

Father also had been compliant with his case plan as he participated in anger management, and individual counseling, completed a parenting program, and maintained employment. He expressed that he wanted to be a part of I.Z.'s life, but noted that I.Z. should be with Mother and I.Z.'s siblings. Father also expressed his goal of obtaining 50 percent custody of I.Z. or continued visitation with him.

In September 2017, the social worker completed a home assessment of Mother's home. Mother was authorized to have unsupervised visits and then overnight visits with the children. In a status review report, the social worker recommended that the court continue the dependency proceedings until after the completion of the children's 60-day trial visit with Mother.

In a December 2017 addendum report, the social worker changed its recommendation and requested that the juvenile court terminate reunification services and schedule a permanency hearing as to the children. In the report, the social worker documented that M.T. stated G.T. had told him that Father was staying at Mother's home and that Mother told her not to say anything about it or Mother would not buy G.T. things. On November 29, 2017, two social workers made an unannounced visit to Mother's home. One of the social workers knocked on the door approximately five times but Mother did not answer the door; the social worker could hear the children playing

inside the home. That social worker called Mother on the telephone; Mother answered and said she would be "right out" and then she opened the door and invited the social workers into the home. One of the social workers observed that E.Z., who was hiding behind a Christmas tree box, "was wearing a diaper, which appeared to be full, and was not dressed appropriately for the weather, as it was cold." The social worker observed the children to be dirty "as evidenced by the soles of their feet, which were black." The social worker asked if she could meet with G.T. in the bedroom.

One of the social workers asked G.T. "how things are living with . . . [M]other" and G.T. "put her face into her hands" and said, "I want to live with my dad." When asked why, G.T. said she did not want to live with Mother. The social worker asked G.T. who slept in the home, and G.T. replied, "I don't know." The social worker noticed a backpack on the floor; the backpack appeared similar to the backpack she saw during compliance visits with Father. She also noticed a pair of men's shoes near the closet, a pair of sunglasses, and a gold chain hanging on the wall. The social worker asked G.T. whether Father was in the home. G.T. responded: "I don't want to get in trouble. I don't want to get my mommy in trouble." The social worker told G.T. that it was important to tell the truth. G.T. nodded her head up and down and pointed to the bed upon which she and the social workers were sitting. The social worker asked G.T. if Father was under the bed and G.T. said, "Yes." G.T. then said, "Amigo it's okay! Come out!" Father slid out from under the bed; Father was barefoot. The social worker asked Father what he was doing in the home. Father said he went to the home to visit I.Z. The social worker advised Father that the visit was not authorized and asked Father to leave. Father gathered his belongings and left the home.

Mother, who appeared flustered, told the social worker that Father had come for a visit and that "this only happened 'one or two times.'" The social worker arranged for M.T. to pick up G.T.; when M.T. arrived, G.T. ran to hug him and did not say goodbye to Mother. The social worker asked the foster parents with whom the

children had lived beginning in July 2017 to come to the home to pick them up. When the foster parents arrived, the children ran to them, said goodbye to Mother, and left the home. The social worker advised Mother that a child and family team meeting would be held to discuss the situation.

In late January 2018, the social worker met with Mother to review her case plan. Earlier that month, Mother gave birth to a baby who was taken into protective custody.[3] Mother told the social worker that she was willing to reenroll in services to assist in reunifying with the children, and was particularly interested in the personal empowerment program and therapy services. She also told the social worker that pursuant to her attorney's advice, she went to the Huntington Beach Police Department to file a restraining order against Father, but was informed she had to file a request for a restraining order at the court and not the police department. The social worker gave Mother information on the Women's Transitional Living Center program and legal advocacy services related to obtaining restraining orders. Mother's visitation with the children thereafter was supervised.

In February 2018, Mother successfully petitioned for a restraining order for the children, G.T., and her new baby against Father. That month, Mother told the social worker that she was on a wait list for the Westminster Family Resource Center and planned to enroll in therapy. The social worker encouraged her to enroll in the personal empowerment program. Father informed the social worker that he was seeking to reenroll in therapy with his prior therapist. He reenrolled in a parenting program.

At the 12-month review hearing, the juvenile court found the extent of Mother's and Father's respective progress toward alleviating or mitigating the causes necessitating placement was minimal. The court terminated reunification services for both Father and Mother and set a permanency hearing for the children.

---

[3] The baby was placed with the children's foster parents, and is not a party to these proceedings.

IV.
THE PERMANENCY HEARING REPORT SHOWS THE POSITIVE RELATIONSHIP THE CHILDREN HAVE WITH THEIR FOSTER PARENTS WHO WISH TO ADOPT THEM.

In the permanency hearing report, the social worker stated that the children were placed in the home of the foster parents in July 2017 and adjusted very well. They remained in the foster home until November 11 when they were released to Mother for the 60-day trial visit, but when that trial visit was terminated on November 29, the children returned to the home of the foster parents where they have remained since.

The foster parents expressed their desire to adopt the children. The social worker observed that the foster parents and the children have loving relationships. The foster parents have stated they consider the children part of their family and wish to provide the children permanence and a loving home. The social worker noted that although the children were too young to make statements regarding the foster home, they appeared comfortable and happy in the foster parents' care. The children sought out the foster parents to meet their needs. The foster parents demonstrated love, patience, and affection for the children.

V.
MOTHER FILES A PETITION UNDER SECTION 388 SEEKING THE RETURN OF THE CHILDREN TO HER CUSTODY AND CARE.

A week before the permanency hearing, Mother filed a section 388 petition requesting that the juvenile court change its order terminating her reunification services and scheduling the permanency hearing. In the petition, Mother argued that since the court made its order, Mother had completed a personal empowerment program, attended counseling with a licensed therapist approved by SSA to address parenting and issues and effects resulting from domestic violence, and had made efforts to obtain a restraining order against Father. She requested that the court enter a new order returning the children to her custody and care or, alternatively, authorizing a 60-day trial visit, or an extension of reunification services "to address any remaining concerns the [c]ourt may have in

order for the children to be returned to . . . [Mother]'s custody and care." Mother claimed the requested change of order would be in the children's best interests, because she has "learned from her past mistakes and has developed insight as to the effects domestic violence has on children." She also stated in the petition she had a "close and loving relationship" with the children and it would be in their best interests "to ensure that their firm bond with . . . [Mother] would continue, as she has made the changes necessary to be a protective and caring parent."

In support of her request, Mother submitted her declaration stating that she was ordered to participate in a personal empowerment program which she completed in May 2018. She was also ordered to attend counseling with a licensed therapist but was initially waitlisted and had only recently begun participating in that counseling. She filed a request for a restraining order against Father, but that order was not implemented "after multiple unsuccessful efforts to locate and serve Father."

In her declaration, Mother further stated she will continue to make efforts to obtain an effective restraining order. She explained that in the past she did not understand or take seriously the effects Father's conduct and their dysfunctional relationship had on the children. She stated: "When I was given a 60-day trial visit with my children, I failed to keep [Father] out of my life and the lives of my children, I failed to stand up to him and do what was right for my children by cutting off all ties with him. I did not want him around, but I did not stand firmly enough in my position to keep him out of my home and away from my children." She asserted she has realized she did not put the children "first above everything else" and will never make the same mistake of putting herself or the children in such a position again. She also stated she loved the children and wanted nothing more but to have them back in her care. At that point in time, she had six hours of supervised visits each week with the children.

VI.

THE JUVENILE COURT DENIES MOTHER'S SECTION 388 PETITION AND TERMINATES FATHER'S AND MOTHER'S PARENTAL RIGHTS; FATHER AND MOTHER EACH APPEAL.

After hearing argument on Mother's section 388 petition, the juvenile court concluded Mother did not make a prima facie showing of a change of circumstances and summarily denied the petition. The juvenile moved to the permanency hearing and admitted into evidence SSA's reports. No testimony was presented at the hearing. After entertaining argument, the juvenile court found the children generally and specifically adoptable and stated it did not find the parent-child relationship exception applied. The court terminated Father's and Mother's parental rights and found the permanency plan of adoption appropriate for the children. Father and Mother each appealed.

DISCUSSION

I.

THE JUVENILE COURT DID NOT ERR BY TERMINATING FATHER'S REUNIFICATION SERVICES.

In his opening appellate brief, Father challenges the juvenile court's order terminating reunification services and setting a permanency hearing as to I.Z. "An order terminating reunification services and setting a section 366.26 hearing is 'not appealable' unless '(A) A petition for extraordinary writ review was filed in a timely manner. [¶] (B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record. [¶] (C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.' (§ 366.26, subd. (*l*)(1); [citations].) Section 366.26, subdivision (*l*) and the court rules implementing it are intended to ensure that resolution of challenges to setting orders are resolved before the section 366.26 hearing." (*In re X.Z.* (2013) 221 Cal.App.4th 1243, 1248-1249.)

Father argues that because the appellate record does not contain the clerk's certificate of mailing to Father the mandatory writ advisement of his right to appeal the order setting the permanency hearing, he was relieved of the obligation to timely seek writ review and now may challenge the order terminating his reunification services and the setting of the permanency hearing. County Counsel disputes Father's claim, stating in the respondent's brief that "[a]bsent evidence to the contrary, this Court can presume that the clerk's statutory duty was performed. [Citation.] If anything, the court's minute order from the April 2018 hearing—noting the correct documents to be sent and Father's correct address on file [citation]—helped confirm that evidentiary presumption."

We do not need to decide whether the absence of the clerk's certificate of mailing from the appellate record preserved Father's challenge to the order terminating reunification services and setting the permanency hearing; even if we assume it does, Father's contention the juvenile court erred by terminating reunification services is without merit.

Whenever a child is removed from a parent's custody, the juvenile court must order provision of child welfare services to the parent deemed eligible for reunification services. (§ 361.5, subd. (a).) Section 361.5 requires a good faith effort to provide reasonable services "'specifically tailored to fit the circumstances of each family'" and "'designed to eliminate those conditions which led to the juvenile court's jurisdictional finding.'" (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472, 1474.)

A finding by the juvenile court that reasonable services have been provided must be made on clear and convincing evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) The juvenile court's finding that reasonable reunification services had been offered or provided is reviewed under the substantial evidence standard. (*Ibid.*) "'When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing evidence, the reviewing court must determine if there is any substantial evidence—that is, evidence

which is reasonable, credible and of solid value—to support the conclusion of the trier of fact.'" (*Ibid*.)

"[I]n reviewing the reasonableness of the reunification services provided by the Department, we must also recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

Here, the juvenile court found by clear and convincing evidence that reasonable services had been provided to Father. Father argues the case plan was not tailored to the specific needs of the family because it did not include conjoint counseling for the parents "as [M]other so requested, when initiating the 60-day trial visit." He also argues SSA should have lifted the requirement that his visits with I.Z. be monitored, "as it planned to do 'on or about November 2017,' prior to the 60-day trial visit, because otherwise it was setting parents up for failure if they ever had family time in violation of the existing orders."

Father does not contend he requested or desired conjoint therapy or any other type of reunification services that he did not receive. He does not offer any legal authority showing that under the circumstances of this case, involving juvenile dependency jurisdiction based on sustained allegations of Father's domestic violence in the home, conjoint therapy would be appropriate. Father was provided other services and indeed participated in a parenting program, counseling, and anger management services, and was authorized to have consistent, albeit monitored, visitation with I.Z. Father repeatedly told the social worker that his goal was to either obtain 50 percent custody of I.Z. or continued visitation with him; he did not suggest that his goal was to reconcile with Mother. Substantial evidence shows Father was provided reasonable reunification services.

In support of his argument he did not receive reasonable reunification services, Father cites Mother's request for conjoint counseling with Father which she made *after* Father was discovered staying in Mother's home with the children during the 60-day trial visit without authorization. A short time after she made this request, Mother obtained a temporary restraining order against Father and took the position with SSA that she had since realized she needed to keep Father away to protect the children from future harm. Mother did not challenge the order terminating reunification services and setting the permanency hearing as inappropriate when it was made. Mother's request for conjoint counseling in this context does not support Father's argument *he* did not receive reasonable reunification services.

In his opening appellate brief, Father also argues: "[SSA]'s position that [M]other and [F]ather getting back together per se put the children at risk of harm, without regard to their accomplishments on the individual case plans and overall bond and appropriateness with I[.Z.], is not only failure to provide reasonable reunification services tailored to this family's need to reunify as a family, it is also an unconstitutional violation of [F]ather's, [M]other's, and I[.Z.]'s freedom to association and rights to familial association under the First and Fourteenth Amendments of the United States Constitution." As pointed out by County Counsel in the respondent's brief, Father cites "no authority that suggests that an agency and/or court expectation in a dependency case for a couple to separate, when that couple has engaged in severe domestic violence in front of the children and where such violence remains a risk, somehow violates a couple's constitutional rights. Nor does Father address both parents' recognition . . . that the couple should remain separated. Mother and Father were free to get back together, through the dangers inherent in such a reunion would naturally have further damaged any reunification efforts."

The juvenile court did not err by terminating Father's reunification services and setting the permanency hearing as to I.Z.

II.

THE JUVENILE COURT DID NOT ERR BY SUMMARILY DENYING MOTHER'S SECTION 388 PETITION.

Section 388 allows a parent to petition the juvenile court to change or set aside a prior order "upon grounds of change of circumstance or new evidence." (*Id.*, subd. (a)(1).) The court must order a hearing on the petition "[i]f it appears that the best interests of the child . . . may be promoted by the proposed change of order." (*Id.*, subd. (d).) "Thus, the parent must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child's best interests." (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.)

A parent need only present a prima facie showing of a change in circumstance or new evidence, and of the child's best interests to obtain the right to a full hearing. (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432.) "A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing." (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157.) The allegations of a section 388 petition must be liberally construed in favor of its sufficiency. (*Ibid.*) We review a juvenile court's order denying a section 388 petition without a hearing under the abuse of discretion standard. (*Id.* at p. 1158.)

In denying Mother's section 388 petition, the juvenile court stated: "Ultimately, what the court would need to find is that there is a change in circumstances since that April 26, 2018, order and I understand that there was a completion of a P.E.P. class, but there was a completion of the P.E.P. class previously, and so I don't know that even that is that much of a change. I don't even know that the petition, the request, establishes changing circumstances. I just—I don't feel that there is a prima facie

showing of a change in circumstances, and also, nothing concrete in terms of best interest or best interest statement for the child.

"I understand it all stems from this incident, but that was a monumental failure in judgment that led to these consequences and whether or not there was something else that could have been done—that mom could have done since April 26th to establish that, it's—unfortunately, it's not for any other party to establish what should have been done. It's for Mom to establish what she did do in those [*sic*].

"Unfortunately, I just don't see any change in circumstances, compounded by the fact that if the court did find any change in circumstances, the only option left would be to return the children, as we are out of time for reunification services, and the court can't make that finding. There is no way. So the request to change [the] court order is denied. Specifically, the court does not find prima facie showing has been made by the request in order to get to an evidentiary hearing."

We agree with the juvenile court that Mother's section 388 petition, including her declaration and its attachments, reflected, at most, changing but not changed circumstances to make a prima facie showing in favor of a change in order under section 388. As pointed out by the juvenile court, Mother had already completed counseling and a personal empowerment program before the 60-day trial visit that was terminated due to her allowing Father to stay in the home with the children without authorization. Her subsequent participation in a personal employment program and further counseling therefore does not show a change of circumstances that would support her requested order that the children be returned to her care and custody.

In addition, that in early 2018 Mother began the process of obtaining an effective and permanent restraining order against Father does not constitute a change of circumstances within the meaning of section 388. Mother did not begin that process until one year after the domestic violence incident that triggered the filing of the juvenile dependency petition in the first place. The record does not show that Mother was

continuing her efforts to serve Father with the restraining order she obtained to make it effective.

Even if Mother had made a prima facie showing of changed circumstances, she failed to make a prima facie showing that the relief she requested in her section 388 petition would be in the children's best interests. The following factors are considered in determining whether a section 388 petition addresses the best interests of the child: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

In *In re Stephanie M.* (1994) 7 Cal.4th 295, the California Supreme Court stated, "[a]fter the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*Id.* at p. 317; see *In re J.C.* (2014) 226 Cal.App.4th 503, 527 [child's "best interests are not to further delay permanency and stability in favor of rewarding Mother for her hard work and efforts to reunify. Mother's best interests are simply no longer the focus"].)

In *In re J.C., supra,* 226 Cal.App.4th at page 527, the court stated, "we decline to apply the *Kimberly F.* factors if for no other reason than they do not take into account the Supreme Court's analysis in *Stephanie M.*, applicable after reunification efforts have been terminated. As stated by one treatise, 'In such circumstances, the approach of the court in the case of . . . *Kimberly F.* . . . may not be appropriate since it

fails to give full consideration to this shift in focus.' [Citation.] We instead follow the direction of our Supreme Court, holding that after reunification services have terminated, a parent's petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child's need for permanency and stability."

Mother's section 388 petition was filed after the juvenile court terminated reunification services. At this stage of the proceedings, we review the petition to see how the relief Mother sought would advance the children's need for permanency and stability. As discussed *ante*, Mother had only begun to address protecting the children from the substantial risk of domestic violence with Father. Although Mother expressed her love for the children and her desire to reunify with them, the children have lived in the home of the foster parents since July 2017 (except for the two weeks in November 2017), where they have been well cared for. The foster parents have expressed their willingness and desire to provide the children a permanent home through adoption if parental rights are terminated. "At this point in the proceedings, on the eve of the selection and implementation hearing, the children's interest in stability was the court's foremost concern, outweighing any interest mother may have in reunification." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.)

Mother argues *In re Hashem H.* (1996) 45 Cal.App.4th 1791, supports reversal of the juvenile court's summary denial of her section 388 petition. *In re Hashem H.* is factually distinguishable and lends no support to Mother's contention. In that case, the appellate court held "[a] fair reading of the petition indicates that appellant's mental and emotional problems which led to the removal of [the child] from her home had been successfully resolved through therapy." (*Id.* at p. 1799.) The mother's "continuous participation in individual therapy for more than 18 months . . . was so successful that her therapist recommended [the child] be returned to her custody." (*Ibid.*) The appellate court held the juvenile court erred by refusing to grant a hearing on the mother's section

388 petition because she made "an adequate prima facie showing of changed circumstances under section 388." (*Id.* at p. 1800.)

Here, Mother has not demonstrated that the problem which led to the removal of the children from her home has been remedied. Throughout the life of this dependency case, Mother has failed to address the negative impacts that the domestic violence between her and Father have had on the children. She failed to timely secure a protective order and she has repeatedly violated orders not to allow Father access to the children without authorization. In her section 388 petition, Mother asserts that she is now understanding the seriousness of the circumstances and will not make the same mistakes again; Mother's assertions reflect at most a changing circumstance.

In her opening brief, Mother also cites *In re Aljamie D., supra,* 84 Cal.App.4th 424, in which the appellate court concluded the juvenile court abused its discretion by summarily denying the mother's section 388 petition. That case, however, is factually distinguishable given the older ages of the minors involved and their expressed desire to live with their mother. The court in *In re Aljamie D.,* concluded that the petition showed changed circumstances and that the best interests of the minors might be served by a change in the juvenile court's prior order, stating, "[a]ppellant's petition showed that the best interests of the children potentially would be advanced by the proposed 60-day visit and eventual change in the placement order. The children, ages 9 and 11, repeatedly made clear that their first choice was to live with their mother. While a child's wishes are not determinative of her best interests, the child's testimony that she wants to live with her mother constitutes powerful demonstrative evidence that it would be in her best interest to allow her to do so." (*Id.* at p. 432.) The appellate court in *In re Angel B.* (2002) 97 Cal.App.4th 454, 463, observed that the section 388 petition's reference to the children's wishes "is clearly important and relevant to the outcome in *In re Aljamie D*."

Here, by contrast, the children were both younger than three years old when they were detained, and were under four years old at the time the section 388 petition was filed and considered by the court. Since their detention, the children were only briefly returned to Mother's custody during the 60-day trial visit, which was terminated when Father was discovered to be staying in the home. Due to their young ages, the record does not reflect either of the children has expressed a desire to be returned to Mother.

The juvenile court did not abuse its discretion by summarily denying Mother's section 388 petition.

III.

THE JUVENILE COURT DID NOT ERR BY TERMINATING FATHER'S AND MOTHER'S PARENTAL RIGHTS.

Father and Mother each argue that the juvenile court erred by finding that the parent-child relationship exception did not apply to preclude the termination of their parental rights. Their arguments are without merit.

Section 366.26, subdivision (c)(1)(B) allows the juvenile court to decline to terminate parental rights over an adoptable child if it finds "a compelling reason for determining that termination would be detrimental to the child" because, inter alia, "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship" and/or "[a] child 12 years of age or older objects to termination of parental rights." (*Id.*, subd. (c)(1)(B)(i), (ii).)

Father and Mother each have the burden of proving both prongs of the parent-child relationship exception were satisfied. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 949.) We consider whether substantial evidence supported the juvenile court's determination the parent-child relationship exception did not apply. (*In re Cliffton B.* (2000) 81 Cal.App.4th 415, 424-425.)

At the time of the permanency hearing, the children were younger than four years old and thus were unable to object to the termination of parental rights. Although

the record shows Father and Mother regularly participated in visitation with the children and that those visits were positive, substantial evidence supported the juvenile court's conclusion that the children would not benefit from continuing the parent-child relationship within the meaning of section 366.26, subdivision (c)(1)(B)(i).

In *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576, the court stated: "In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated. [¶] Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent. [¶] At the time the court makes its determination, the parent and child have been in the dependency process for 12 months or longer, during which time the nature and extent of the particular relationship should be apparent. Social workers, interim caretakers and health professionals will have observed the parent and child interact and provided information to the court. The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the

parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond."

SSA's reports showed that the children had lived with the foster parents since July 2017 excepting the approximately two-week period Mother had custody of the children until the 60-day trial visit was terminated. The children looked to the foster parents to meet their needs and the foster parents consistently met those needs. The children have consistently appeared comfortable and happy in the foster parents' home. The foster parents have expressed their love for the children and their desire to provide a permanent and loving home for the children if they were freed for adoption.

Neither Father nor Mother testified at the permanency hearing, and thus neither provided testimony regarding their respective parent-child bonds. Mother's counsel asked that the juvenile court consider the documents and statements made in connection with the section 388 petition in considering the applicability of the parent-child relationship exception. In her declaration, filed in support of the section 388 petition, Mother stated she loved the children "with all of [her] heart" and pledged she would not repeat past mistakes. Mother's declaration, however, was insufficient to carry her burden to establish the exception to termination of parental rights.

The juvenile court did not err by terminating Father's and Mother's parental rights.

DISPOSITION

The orders are affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.